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No. 94-52

In the Supreme Court of the United States

OCTOBER TERM, 1994

KEVIN BLAKE, SEAN BROGAN, MARY KELLIHER, JOHN D. McCARTHY AND MORTIMER O'SHEA,
PETITIONERS,

v.

PLANNED PARENTHOOD LEAGUE OF MASSACHUSETTS, INC., ET AL.,
RESPONDENTS.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the federal due process clause require that persons who blockade abortion clinics and are enjoined by state courts from doing so in the future be given the names and addresses of the clinics' abortion patients, and be allowed to depose them and call them to testify at trial?

2. Does a permanent injunction, which bars Petitioners from "trespassing on, blocking or in any way obstructing access" to abortion facilities, violate the First Amendment?

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Respondents[1] respectfully submit this brief in opposition to the petition for a writ of certiorari to review the judgment of the Supreme Judicial Court of Massachusetts, Appendix A to the petition.

[1] Respondents submitting this brief consist of four clinics that provide abortions and that were blockaded, and the physician on duty at one of them: Planned Parenthood League of Massachusetts, Inc.; Preterm, Inc.; Repro Associates (whose corporate name is Associated Physicians, Inc.); Crittenton Hastings House (a corporation whose full name is Crittenton Hastings House of the Florence Crittenton League); and Stanton P. Goldstein, M.D. None of the four corporate respondents has a parent or subsidiary.

OPINIONS BELOW

In addition to the reported opinion of the Supreme Judicial Court, *Planned Parenthood League of Massachusetts, Inc.* v. *Blake*, 631 N.E.2d 985 (Mass. 1994), the trial court issued a 150 page unreported decision setting forth in detail the conduct by Petitioners and others which led to issuance of the permanent injunction. *See* Appendix to [Petitioners'] Brief in the Supreme Judicial Court, Volume II, pp. 397-546 (hereinafter A., Vol., p. ____).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions alleged by Petitioners to be involved (the due process clause of the Fourteenth Amendment and the speech clause of the First Amendment) are set forth in the petition. The case was substantially decided by the Supreme Judicial Court on the basis of state law, the Massachusetts Civil Rights Act ("MCRA"), Mass. Gen. Laws, chap. 12, §§11H-11I, which, in pertinent part, provides as follows:

> Section 11H. Whenever any person or persons . . ., interfere by threats, intimidation or coercion, or attempt to interfere by threats, intimidation or coercion, with the exercise or enjoyment by any other person or persons of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, the attorney general may bring a civil action for injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the right or rights secured. . . .
>
> Section 11I. Any person whose exercise or enjoyment of rights secured by the constitution or laws of the United States, or of rights secured by the constitution or laws of the commonwealth, has been interfered with, or at-

> tempted to be interfered with, as described in section 11H, may institute and prosecute in his own name and on his own behalf a civil action for injunctive and other appropriate equitable relief as provided for in said section. . . .

STATEMENT OF THE CASE

Having conducted blockades and clinic invasions that made it physically impossible for women to exercise their constitutional right to choose abortion confidentially, Petitioners argue under a fair trial/due process theory that they were improperly enjoined under state law from doing it again because the state court would not allow them to find out who the women were, depose them, and then call them as *defense* witnesses at trial (to say what? that the women felt positive about clinic entrances being blockaded and operating rooms occupied?). This cynical tactic did not succeed in the Massachusetts Supreme Judicial Court and cannot succeed here.

The Supreme Judicial Court ("SJC") held that the Massachusetts Attorney General had standing to sue under the applicable state statute — the MCRA. The SJC therefore declined to reach the issue of the standing of the abortion clinics and physician to argue the constitutional privacy rights of their patients (which the trial court had upheld), but noted that lower federal courts have generally recognized such standing. Petition, A6-7 and n.7.

The SJC then held that the trial court had correctly interpreted the meaning of the statutory requirements of the MCRA — "threats, intimidation or coercion", and had correctly applied the objective standard of whether a "reasonable woman seeking abortion services" would be threatened, intimidated or coerced by Petitioners' conduct. Petition A7-9.

Next, the Court held that the trial court properly concluded that Petitioners conduct violated this statute, noting the trial court's findings that:

> . . . the defendants knowingly trespassed on clinic property and intentionally used their bodies or Kryptonite bicycle locks, or both, to prevent others physically from entering, exiting or using medical facilities to obtain abortions. . . . Their conduct "presented frightening, threatening and impermeable physical obstacles to patients attempting to enter into clinics, and forced those patients to forego their right to enter the clinics and obtain abortion services." "The patients reasonably perceived the crowding of a large number of bodies in a confined area of a medical facility as posing a risk of personal physical harm." "[T]he acts of trespassing and crowding into clinic waiting rooms, conference rooms, operating rooms and medical areas reasonably threatened and intimidated patients who were there awaiting services." "The defendants actions were specifically designed to dissuade the patients from seeking the immediate care and treatment to which they were constitutionally entitled." The [trial] judge ruled properly that the [Petitioners'] conduct "constitutes the application of physical force to constrain the patients and staff of the plaintiff's clinics from receiving and providing abortion services. Such conduct is coercive within the meaning of [the] MCRA [and] . . . constitutes 'an actual or potential physical confrontation accompanied by the threat of harm.'"
>
> "These actions were threatening, intimidating and coercive to patients who sought to enter and use the clinics' facilities. The defendants' physical confrontation of clinic patients and staff on numerous occasions in cities and towns across the Commonwealth, even where no violence was involved, was designed, intended and highly likely to instill fear and concern for personal safety in a reasonable person seeking abortion services." [Petition, A10]

Accordingly, the SJC upheld as correct the trial court's ruling that "a reasonable woman seeking abortion services" would

be made "fearful and apprehensive, and would feel pressured," by Petitioners' conduct, so that "she would desist from seeking those services while that conduct continued." *Id.*, A11.

The SJC rejected Petitioners' claim of error in being denied the identities of actual women patients, noting that (i) in this civil case under state law the applicable test was the reaction of a hypothetical reasonable woman not a specific "victim", (ii) only prospective injunctive relief was sought, (iii) plaintiffs had proved their case with non-patient witnesses (and other evidence), (iv) Petitioners' contention lacked "practical plausibility" because there was no "reasonable risk" that Petitioners could have discovered evidence from "women . . . whose lives they disrupted" that would have led the trial judge to different conclusions in light of the evidence at trial ("number of trespasses", "scores of scheduled abortions that were impeded", "physical intrusiveness of the blockades"), (v) it was within the trial court's discretion to deny the requested discovery, particularly given that no woman patient testified and that the plaintiffs "assumed the task of proving" their case without such testimony, and (vi) the intrusion into women's privacy rights would have been substantial. *Id.*, A12-13.

> Considering the likelihood that the defendants would obtain no evidence materially beneficial to them from *women those lives they intentionally and admittedly disrupted* and further considering that disclosure of the identity of these women would intrude into their privacy on a matter of constitutional right, we conclude that the trial court did not abuse its discretion in denying disclosure of the identities of the women affected by [Petitioners'] conduct. *Id.*, A13-14, emphasis added.

The SJC also noted that the Massachusetts Attorney General (who would himself have no access to clinic patients' names) is given special statutory standing to sue under the MCRA, and that the case at bar was brought solely to protect

"against future unlawful conduct that would be harmful to persons not currently identifiable." *Id.*, A14. This statutory standing permits the Attorney General to encourage compliance with the law where "individual plaintiffs are unlikely to come forward because of a perceived stigma associated with the activity of seeking abortion services, because the duration of their involvement with the issue is transient, or because they cannot anticipate that this is an issue that will affect them in the future." *Id.*, A14, n.13.[2]

No justice of the SJC dissented from the holding that the trial court did not abuse its discretion in denying disclosure of the identities of woman patients.

Finally, the SJC rejected Petitioners' argument to it against clause (c) of the injunction, holding that there was no error in the use of the words "aiding or abetting". *Id.*, A13-14. Three justices dissented, largely addressing their dissent to the separate holding in *Planned Parenthood League of Mass.* v. *Operation Rescue*, 550 N.E.2d 1361 (Mass. 1990) (upholding the preliminary injunction in this case) that clause (a) of the injunction was overbroad because it could be applied to non-physical confrontations.

REASONS FOR DENYING THE WRIT

No important issue of federal law is presented by the SJC decision. Massachusetts law permits enjoining persons from interfering with civil rights by threats, intimidation *or* coercion, authorizes the Massachusetts Attorney General to seek such an injunction, and measures whether such interference has occurred by an objective standard of a hypothetical reasonable person (here, a woman seeking abortion). Respondents overwhelmingly proved such interference. Indeed, Petitioners' effectively admit this, as "coercion" is an independent basis for finding such interference, and they do not challenge

[2] These are the reasons customarily given for abortion clinic and physician standing. *Id.*, A7, n. 7 and cases cited.

the state court ruling that the blockades are inherently coercive.[3] Because Respondents proved their case without calling women abortion patients, because there is no reasonable risk whatever that Petitioners would "have discovered evidence from these women *whose lives they [objectively] disrupted*" to counter that proof (Petition, A12, emphasis added), and because the trial court had discretion to order or deny disclosure, no important issue of federal law is presented by a state court decision holding that there was no abuse of discretion in denying disclosure.[4] Indeed, the SJC avoided creating an important issue of federal law by recognizing that the intrusion into the privacy rights of the woman at issue would have been substantial had disclosure been ordered, by recognizing the constitutional element of that privacy right, and by deciding the case on the basis of interpreting state law (the MCRA) and applying an abuse of discretion standard.

I. Because Petitioners Were Not Entitled To Depose Or Subpoena The Clinics' Women Patients For Abortion Services, Their Claim Of A Fair Trial/Due Process Violation Is Meritless

Petitioners were not entitled to confront in deposition or at trial the women patients whom they previously confronted by blockade and invasion, and their trial was neither unfair nor a violation of due process.

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[3] The " 'application of physical force to constrain patients and staff of the plaintiff clinics from receiving and providing abortion services . . . is coercive within the meaning of the MCRA.' " Petition, A10.

[4] Contrary to Petitioners' claim (*Id.*, 11), the SJC did *not* call "theoretically sound" Petitioners' claim that woman patients "possessed critical information." Rather, the SJC merely made the obvious evidentiary point that Petitioners' "relevancy contention" was theoretically sound. *Id.*, A12. Due process does not require that every bit of conceivably relevant evidence be discovered or admitted, still less that a party be able to seek it or offer it without regard to the burdens imposed.

A. *Petitioners' Fair Trial/Due Process Argument Ignores The Standing Under State Law Of The Respondents, Especially The Attorney General, To Bring This State Statutory Action*

The Massachusetts Attorney General indisputably has standing, and the Respondent abortion clinics/physician also have standing (though this issue was not reached below), to sue for a violation of the rights of "any person", as those words are used in the MCRA. Whether the particular persons whose rights were interfered with must in fairness be identified as potential witnesses turns on the specifics of the particular case: in this case, they clearly should not have been identified.

Section 11H of the MCRA, which gives the Attorney General standing, allows him to bring an action when the rights of "any person" are interfered with by threats, intimidation or coercion. The statute does not require that the "any person" be identified in all cases.

In addition, Section 11I of the MCRA allows the "any person" himself or herself to bring an MCRA claim. However, abortion clinics have standing to sue on behalf of such persons to protect their privacy. *Singleton* v. *Wulff*, 428 U.S. 106, 117 (1976) (woman "may be chilled from [exercising right to choose abortion] by a desire to protect the very privacy of her decision from the publicity of a court suit"); *Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 62 (1976); *Doe* v. *Bolton*, 410 U.S. 179, 188 (1973); *Bellotti* v. *Baird*, 443 U.S. 622, 627 n.5 (1979). For the same privacy reasons that allow third party standing, neither "fairness" nor "due process" requires that those patients be identified if an MCRA violation can be proved without their involvement, and if nothing they could say (within the realm of plausibility) would constitute a defense. There were undoubtedly some women patients, for example, who were "deterred" from coming to blockaded clinics because they received a telephone call saying "don't come. We've been blockaded". Because the MCRA is nonetheless violated by the blockade, the identity

of those women is irrelevant to plaintiffs' proof, and irrelevant to any legal defense.

B. *Respondents Proved Violations Of The MCRA By Evidence As To Petitioners' Own Conduct.*

It is *Petitioners' conduct* in physically blocking access to and invading and physically occupying abortion clinics that violates the MCRA.[5] This conduct by itself proved that Petitioners: (a) interfered with women's exercise of their constitutional right to obtain abortions; and (b) did so by threats, intimidation or coercion.

1. Testimony of women patients was not needed to prove threats, intimidation or coercion.

Petitioners incorrectly argue that they should be "allowed to confront the women who were allegedly seeking abortion services to inquire . . . whether she was 'threatened', 'intimidated', or 'coerced' by [Petitioners' actions]." Petition, 16-17. These are, of course, the same women whom Petitioners previously "confronted" by blockading the exteriors and interiors of the clinics where their abortions were scheduled. However, the "crucial evidence" (Petition, 17) is not what some patient "felt", but whether Petitioners blockaded, whether the blockades delayed or prevented abortions, and whether the blockades were threatening, intimidating *or* coercive to a hypothetical reasonable woman seeking an abortion.

A trial court is certainly competent to make a determination — without the testimony of any individual women whose rights have been interfered with — as to whether a reasonable woman seeking an abortion or a reasonable person seeking to provide abortion services would be threatened, intimidated

[5] Respondents proved nine separate occasions involving six abortion clininc where demonstarations "blocked entrances or physically invaded abortion clinics . . . [and] remained . . . after they had been notified that they were trespassing." Petition, A5.

or coerced by defendants' conduct. Here, the SJC held that the trial judge was "warranted in [so] finding, and was correct in [so] ruling. . . ." Petition, A10-11. That holding raises no federal question whatever.

2. Testimony of women patients could not provide a defense.

Similarly, the state court was correct in concluding that provision of patient names to Petitioners would not furnish them with a plausible defense such that patient's privacy rights should be overridden (and, as a practical matter, the case dropped and the MCRA abandoned as a tool to prevent clinic blockades). A blockade "causing abortion services to be prevented or delayed" (Petition, 6) is *per se* "coercion" under the MCRA. And it would have been clearly erroneous for the trial judge *not* to have found that a reasonable woman seeking an abortion would have been threatened or intimidated by the blockade (especially by blockaders "Kryptonited" to each other on the floor of an operating room).

Petitioners suggest the following inquiries that due process somehow requires clinic blockaders to be able to ask patients at deposition or trial before future blockades can be enjoined: "whether a scheduled abortion was delayed because of the woman's reluctance to encounter marching protestors, reluctance to be recognized, reluctance to have people show them pictures or literature, reluctance to go near . . . a crowd . . ., a [moral] change of mind, information from clinic personnel or police that abortions were impossible that day . . . or [which defendants wrongly say is an exclusive alternative] were 'threatened,' 'intimidated', or 'coerced' by the defendants' actions." (Petition, 16-17.)

These inquiries, as a matter of state law (the MCRA), are not relevant because Petitioners do not dispute that they did blockade and invade clinics, preventing abortions. At minimum, that conduct is "coercion" under the MCRA, and properly enjoinable for the future under the MCRA. It is no

defense under the MCRA that some women may have stayed away merely because a blockade draws a crowd, and the press. Undoubtedly, there were patients with scheduled appointments who turned away from a blockaded clinic without ever getting close enough to be threatened or intimidated, and some may have even been telephoned by clinic staff and told that the clinic was blockaded shut and to stand by for a further call to reschedule. These women were all nonetheless coerced: the blockade physically prevented them from gaining access to the clinic. Such coercion — as a matter of *state* law — raises no federal question.

In addition, the state court found that a reasonable woman patient would be threatened or intimidated by the prospect of trying to force her way through the blockade (never mind getting on an operating table in a room of "Kryptonited" blockaders). Petition, A10. Even if "coercion" were not in the MCRA, Petitioners would have no defense unless it can be imagined that a majority or sufficiently large minority of women patients would actually have testified at trial that they did not find the blockade threatening or intimidating so that a judge could not find that a reasonable woman patient would be threatened or intimidated. The likelihood of this is nil — certainly far too low to imagine overriding the constitutional privacy right of women to seek abortion *confidentially*.[6] What reasonable woman seeking an abortion, for example, would

[6] Petitioners', whose blockades at times involved hundreds of supporters either blockading, or demonstrating in support of the blockades, failed to put on a single witness to testify that a blockade was *not* threatening or intimidating. They deposed none of Respondents' (plaintiffs) eyewitnesses. They did not seek redacted records of clinic patient symptoms on the days of the blockades. And they made no showing at trial that abortion patients would say anything to assist in their defense. The most they could suggest is the truism that some patients never got to the point of feeling threatened or intimidated (because of their own personalities, or because they never got close to the clinic), which did not in the least prevent the trial judge on overwhelming evidence from finding that a *reasonable* woman would have felt threatened or intimidated. This truism is, of course, irrelevant to the independently sufficient state law ground for the injunction of "coercion" under the MCRA.

have been willing at the blockade in New Bedford (Petition, A6) to climb over and among the "Kryptonited" blockaders in the hallway (whose legs protruded into the operating rooms), disrobe in their presence, lie down on an examining table, undergo an abortion procedure *in their presence*, remain for a one hour recovery period, and then walk out again through the same group of invaders — all without feeling threatened or intimidated?[7]

Because no individual woman was a party to this lawsuit, those cases relied upon by defendants in which a party to a litigation was ordered to disclose the names of its members are inapplicable. *See, e.g., National Organization for Women* v. *Sperry Rand Corp.*, 88 F.R.D. 272 (D. Conn. 1980) (plaintiff ordered to disclose the names of its *own* members). The court's holding in *Sperry Rand* — that, by bringing the suit, plaintiffs at least partially waived any right to privacy they otherwise had, *id.*, at 275, — is inapplicable to this case because the women scheduled for abortions did not bring suit and thus did not waive their constitutional right to privacy.[8] Indeed, an action, such as here, for prospective injunctive relief under a state civil rights statute by a state attorney general (who could have been the sole plaintiff in this case[9]) is fundamentally different from a damages case such as *Sperry Rand*. And the premise of *Sperry Rand* — that by suing for

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[7] The following finding by the trial judge reflects an example of a woman patient who was obviously "coerced" under the MCRA, whom it is outlandish to think would give helpful evidence to Petitioners, and whom it would have been unthinkably cruel to force to appear at trial.

> 267. One patient was suffering the involuntary termination of a wanted pregnancy and was bleeding. She was at the [clinic] to have the non-viable fetus removed. The [clinic] staff made arrangements for her to be taken to the Brigham and Women's Hospital for emergency treatment because the defendants' actions prevented the procedure from being performed at the [clinic] that day. (A. Vol. II, pp. 467-8).

[8] Women's constitutional right to choose abortion confidentially would be a very weak right if it could be waived by someone else's decision to commence a lawsuit.

[9] For that reason, the SJC did not address the issue of the clinics' and physician's standing. Petition, A6-7.

damages, plaintiffs waive their privacy rights — does not apply to a public enforcement action such as this became when the Massachusetts Attorney General intervened. The prosecution of such an action by a state attorney general cannot waive privacy rights of third parties, much less privacy rights of constitutional dimension.

Petitioners' claim of denial of due process at trial is nothing more than a variation on the same "discovery" argument, and flawed for the same reasons.[10] Petitioners' were well aware of the names of their accusers (the named plaintiffs and the plaintiff-intervenor: the clinics and the Attorney General), and Petitioners' had every opportunity to cross-examine the source of information for all evidence presented to the court (in the case of witnesses' testimony as to patients' observable physical reactions to defendants' conduct, the source of information was the testifying witness). Petitioners in this case were not denied discovery on any "crucial issue," nor were they denied due process.[11]

C. *The Information Sought By Defendants Is Constitutionally Protected.*

Women have a constitutional right to choose abortion confidentially and Petitioners' attempts to obtain the identities of women scheduled for abortions squarely contravenes that right. *See Planned Parenthood of Central Missouri* v. *Danforth*, 428 U.S. 52, 80, 118 (1976); *Bellotti* v. *Baird*, 443 U.S.

[10] For example, defendants' reliance on *Western Electric Co., Inc.* v. *Stern*, 544 F.2d 1196 (3rd Cir. 1976) is misguided for the same reasons as is defendants' reliance on *Sperry Rand* in support of its discovery arguments. At issue in *Western Electric* was the discovery of the allegations of discrimination by members of the *plaintiff class* seeking victim-specific damages, whereas here defendants sought the identities of women patients who were not parties to this litigation.

[11] The hollowness of Petitioners' position is reflected in their claim that "[d]iscovery of all relevant information is the cornerstone of our judicial system . . ." Petition, 19 n.9. There has probably never been a case in which "all" relevant information has been discovered. Balancing relevance against burden is the everyday business of trial courts, and hardly of constitutional dimension.

622, 644 (1979); *Whalen* v. *Roe*, 429 U.S. 589, 600 (1977) and notes 23-25 (1977); *Planned Parenthood League of Mass.* v. *Operation Rescue, supra*, 550 N.E.2d at 1365. *See also Planned Parenthood of Southeastern Penn.* v. *Casey*, ____ U.S. ____, 112 S.Ct. 2791, 2832 (1992) (disclosure and reporting of abortion-related information must "properly respect a patient's confidentiality and privacy" and ensure that "the identity of each woman who has had an abortion remains confidential") (citations omitted). Women who visit abortion clinics and provide confidential information do so with the constitutionally-protected expectation that it will be used only by clinic personnel for medical purposes and not given to third parties, particularly those who are adamant in their opposition to abortion.[12]

II. The Injunction Does Not Violate The First Amendment

The permanent injunction prohibits only physical conduct and activity: "trespassing on, blocking or in any way obstructing access (either ingress or egress) to any facility . . . which provides abortion counselling or services."[13] Petitioners' challenge to these words on First Amendment overbreadth grounds is misplaced.

The words "or in any way obstructing access" do not create an issue of overbreadth. *Broadrick* v. *Oklahoma*, 413 U.S. 601, 615 (1973) (when a statute regulated "conduct" as

[12] The SJC noted that the trial judge "fulfilled the Supreme Court's expectations", reflected in *Whalen* v. *Roe*, 429 U.S. 589, 599-600 (1977), that trial judges would "protect attempts at unwarranted disclosures for evidentiary purposes." Petition, A14, n.11. Disclosing an abortion patient's identity to an abortion clinic blockader would obviously be a "substantial obstacle to [that] woman's exercise of the right to choose." *Planned Parenthood of Southern Penn.* v. *Casey*, ____ U.S. at ____, 112 S.Ct. at 2821.

[13] That injunction (in its virtually identical preliminary injunction form) has already been applied to two of the original defendants in this case, who violated it by ***physical*** conduct. *Commonwealth* v. *Cotter*, 612 N.E.2d 1145 (Mass. 1993), and *Commonwealth* v. *Brogan*, 612 N.E.2d 656 (Mass. 1993). Brogan is one of the Petitioners.

opposed to "speech", its "overbreadth . . . must not only be real, but substantial as well, judged in relation to the statute's plainly legitimate sweep."); *New York* v. *Ferber*, 458 U.S. 747, 773 (1982) (upholding state prohibition on child pornography, and noting that Court would not "assume that the New York courts will widen the possibly invalid reach of the statute . . ."). *See also National Organization of Women, Inc.* v. *Scheidler*, ____ U.S. ____, 114 S.Ct. 798, 807 (1994) (Souter, concurring) (no First Amendment reason to read an economic motive requirement into application of RICO to abortion clinic blockaders, because no reason to prevent RICO from applying to "acts of violence we need not fear chilling"). Petitioners turn traditional rules of construction on their head by arguing that these words "must be construed to include . . . nonphysical confrontation." Petition, 21. To the contrary, the injunction should be construed to *prevent*, not create, a constitutional issue, which means it must be construed to exclude speech-protected activities, and this Court, at this stage, must assume that the Massachusetts courts will adopt such a construction.[14]

Moveover, one can envision physical activities that would impede or prevent clinic access that might not involve "blocking access" (e.g., severing utilities or throwing "stink bombs" through windows), but that would involve "obstructing access". If the prohibition against "obstructing access" burdens speech at all, which Responsents do not concede, it does so less than a "36 foot buffer zone around clinic entrances and driveways" recently upheld by this Court as "burden[ing] no more speech than necessary to accomplish the governmental interest at stake.". *Madsen* v. *Women's Health Center, Inc.*, ____ U.S. ____, 62 U.S.L.W. 4686, 4690 (June 30, 1994) (Rehnquist, C.J.) (also noting, at 4690, the state's

[14] *See*, in the context of interpretation of legislation, *New York* v. *Ferber*, 458 U.S. 747, 768 (1982) (Court allows state court the opportunity to construe a law to avoid constitutional infirmities); *Time, Inc.* v. *Hill*, 385 U.S. 374, 397 (1967) (Court assumes that state court will construe statute "to avoid invasion of the constitutional protections of speech and press").

"strong interest[s]" implicated by targeted picketing of abortion clinics). *See also Cox* v. *Louisiana*, 379 U.S. 536, 555 (1965) (upholding prohibition of picketing in front of courthouse interfering with free ingress and egress).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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